

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-309

September 3, 2003

VARTEC TELECOM, INC.

Proposed Tariff Revision to Change
The Text of the General Regulations
Section of the Local Exchange Tariff

**ORDER REJECTING PROPOSED
TERMS AND CONDITIONS REVISION
AND WAIVER REQUEST**

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we reject Vartec Telecom, Inc.'s (Vartec or Company) request for a waiver of section 8(A) of Chapter 291 of our Rules as well as Vartec's proposed revisions to its Local Telecommunications Services schedule of terms and conditions filed on April 28, 2003.

II. DECISION

On April 28, 2003, Vartec filed a proposed revision to its Local Telecommunications Services schedule of terms and conditions, M.P.U.C. No. 3, in order to introduce a new service offering to be known as "One Choice® Unlimited". The proposed offering includes certain limitations in a so-called "Acceptable Use Policy." We find that some of the terms of this policy may be deceptive and unfair to consumers. First, the offering is called and marketed as "Unlimited" local, interstate and intrastate service but lists "calling patterns and usage that considerably exceed what is considered usual and normal for residential customers by industry standards" under "Prohibited Use/Abuse." The Company then "reserves the right, in the event of fraud, to terminate services immediately without notice or exigent circumstances." Upon inquiry to the Company, it was revealed that usage in excess of 2000 minutes may be considered "excessive" and constitute "fraud" yet this number of minutes is not communicated to the customer in the marketing material or at the time that the Customer signs up for service.

On May 8, 2003, the Company filed a request for a waiver of Chapter 291, §8 (A), which specifies a 14-day notice period for disconnection of local service. The only reason the Company offered in support of its waiver request is to "safeguard its interest against potentially fraudulent use." Vartec did not explain why the minute limitations could not be more clearly communicated to the customers who believe they are purchasing "unlimited" usage. Section 304 of Title 35-A requires utilities to include all terms and conditions in their schedule of terms and conditions. A limit of 2000 minutes of use for local and toll calling could be an important condition of service for consumers who may be considering other packaged telecommunications offerings. In addition, Vartec's proposed language has the potential for allowing discrimination among similarly situated customers, which is

prohibited under 35-A M.R.S.A §702. We are not persuaded that granting this waiver is in the public interest. Further, Vartec has made no showing that the waiver is consistent with the purposes of Chapter 291 and Title 35-A. Accordingly, we reject the proposed revision.

Dated at Augusta, Maine, this 3rd day of September, 2003.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch

Diamond
Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.